

[From the Washington Post, July 15, 2009]
 12 FEDERAL AGENTS ARE SLAIN IN MEXICO
 (By William Booth)

NUEVO CASAS GRANDES, MEXICO, JULY 14.—Mexican authorities said Tuesday that a super-violent drug cartel called La Familia was responsible for torturing and killing 12 federal agents whose bodies were found dumped alongside a mountain road in the western state of Michoacan late Monday.

The agents, who included one woman, had been investigating organized crime in Michoacan, where gunmen launched a series of highly coordinated commando attacks against police officers and soldiers over the weekend.

The abduction, torture and execution of such a large group of federal agents marks a steep escalation in President Felipe Calderón's war with the drug cartels. Though drug mafias often clash with local police officials they fail to intimidate or corrupt, a direct counterattack against federal forces is almost unheard-of. The 12 agents represent the highest one-day death toll for federal forces in the three-year-old drug war.

Placed beside the corpses of the agents, who were off-duty when they were abducted, was a sign threatening police, Monte Alejandro Rubido, a senior federal security official, said at a news conference.

Federal officials say they think the attacks by La Familia, a mini-cartel that announced its presence two years ago by rolling five decapitated heads into a dance hall, were carried out in retaliation for the capture of one of the group's leaders.

The attacks began at dawn Saturday in Michoacan's capital, Morelia, shortly after the arrest of Arnold Rueda Medina, reported to be the right-hand man of La Familia founder Nazario Moreno Gonzalez, known as "El Mas Loco," or the Craziest One.

After La Familia gunmen were repelled in their attempt to free Rueda, they went on what police described as a shooting rampage to "avenge" his capture. The attacks, in which convoys of gunmen mounted surprise assaults on government positions in eight cities, went on for 10 hours Saturday and continued sporadically Sunday.

Mexican law enforcement officials say La Familia is a different kind of cartel, combining a code of extreme violence with a commitment to protect Michoacan residents from outsiders—which would include federal agents and army soldiers.

Members of La Familia are recruited from rural militias and drug treatment centers. Federal authorities swept into city halls in Michoacan and arrested 10 mayors in May on suspicion of colluding with the gang.

La Familia is fighting for control of cocaine-smuggling routes that lead from the port of Lazaro Cardenas toward the United States. The group also operates clandestine methamphetamine labs and marijuana farms in the mountains.

The ACTING PRESIDENT pro tempore. The Senator from Texas is recognized.

SOTOMAYOR NOMINATION

Mr. CORNYN. Mr. President, I would like to address the nomination of Judge Sonia Sotomayor to be an Associate Justice of the U.S. Supreme Court.

The Constitution confers upon the Senate the power to provide advice and consent on judicial nominations as one of the most solemn responsibilities we have. Supreme Court Justices have al-

ways had tremendous power within our constitutional system of separated and enumerated powers. In recent decades, growing concern has arisen over judicial activism on the Court, which has the necessary consequence of taking power away from the elected representatives, and thus the people themselves, and conferring it to those with life tenure, unelected judges who have occasionally used this power conferred upon them in the Constitution to impose their own views and their own agenda on the American people and substituting that for the views of their elected representatives.

We now see that five votes on the U.S. Supreme Court can invent new rights that are not found in the Constitution or narrow the scope of rights that generations of Americans have come to view as fundamental. Each Justice serves for life, so every time a nominee comes before us I think it is entirely appropriate, indeed required, that we exercise due care in exercising this power of advice and consent.

Yes, Senators exercise the power, and also the responsibility we have under the Constitution with great care and I believe with great respect for every nominee. Sadly, over recent years we have seen judicial nominees treated with the opposite of respect and fairness. Some nominations have become quickly politicized, before the nominees have even had a chance to speak for themselves or to answer important questions or, perhaps, to put their record in context. We have seen outrageous accusations used to score political points and to damage a nominee in the court of public opinion before they have had an opportunity to even answer those concerns themselves.

It is no secret that I remain deeply frustrated by the treatment of nominees such as Miguel Estrada, who was nominated by President George W. Bush to the District of Columbia Court of Appeals, sometimes acknowledged as the second highest court in the land. Mr. Estrada was filibustered seven times by the Democratic minority and refused an up-or-down vote on the Senate floor—something that was literally unheard of in previous times. Many Senators share my view that had he been confirmed to the District of Columbia Court of Appeals, he could have been the first Hispanic nominated to the U.S. Supreme Court. Instead, that honor goes to the nominee we have before us, Judge Sonia Sotomayor.

From the beginning I was determined to make sure Judge Sotomayor's nomination process and hearing would be different from that given to Miguel Estrada and others. When I first met with her in June, I pledged to her that I would do everything in my power to see that she was treated with fairness and respect. When individuals, and some organizations, said or did things that cheapened the process, I said so. When supporters and opponents of Judge Sotomayor made accusations of racism, I repudiated them because I be-

lieve all such accusations are incompatible with the respectful and dignified consideration of her nomination.

In the end, I was pleased that Judge Sotomayor said she could not have received a more fair hearing and more fair treatment during the confirmation process.

I believe a fair process and fair hearing means neither prejudging nor preconfirming a judicial nominee. Fair treatment means looking at the judge's record, including her public statements about the role of a judge in our separated powers of government. Fair treatment means giving the judge, the nominee, an opportunity to explain her record and her comments, and to put those in the appropriate context.

Going into the hearings, I found much to admire about Judge Sotomayor's record. She is an experienced judge with an excellent academic background. She appears to be a tough judge—which may be to her credit—and demands a lot of the lawyers who appear in oral argument before her court. For the most part, her decisions as a district court judge and as a member of the court of appeals were within the mainstream of American jurisprudence.

Yet going into the hearings I also had some very serious questions that I thought it was appropriate to ask her and that she needed to answer. While, as I said, her judicial record is generally in the mainstream, several of her discussions demonstrated cause for concern about the kind of liberal judicial activism that has steered the courts in the wrong direction over the past few years, and many of her public statements reflected a surprisingly radical view of the law.

Some have said we just have to ignore her public statements and speeches and just focus on her decisions as a lower court judge. I disagree with that position. Judges on the lower courts; that is, the district court and the court of appeals, have less room to maneuver than a Supreme Court Justice who is not subject to any kind of appellate review. Supreme Court Justices can thus more easily ignore precedents or reject them.

This is why Judge Sotomayor's speeches and writings on judicial philosophy should matter, and they concern me a great deal. These speeches and writings contain very radical ideas on the role of a judge. In her speeches she said things such as there is no objectivity, no neutrality in the law, just a matter of perspective. She said courts do, in fact, make policy and seemed to say that was an appropriate role for the courts of appeals. She even suggested that ethnicity and gender can and should impact on a judge's decisionmaking process.

For 13 years of my life I served as a State court judge, a trial judge, and a member of the Texas Supreme Court. I strongly disagree with the view of the law that says there is no impartiality, no objectivity, no law, with a capital

"L," that a judge can interpret. It is, to the contrary of Judge Sotomayor's statements, merely a matter of perspective. There is no impartial rule of law.

I don't know how one can reconcile her statement that there is no objectivity, no neutrality in the law, with the motto inscribed above the U.S. Supreme Court building which says "Equal Justice Under the Law." If there is no such thing as objectivity and neutrality, only a matter of perspective, how in the world can we ever hope to obtain that ideal of equal justice under the law? I just don't know how one can reconcile those.

Despite my concerns about some of Judge Sotomayor's decisions, as well as some of her statements about judging, I went into the hearing with an open mind. I believed she deserved the opportunity to explain how she approached some of the most controversial cases on which she has ruled and to put her public statements in context. I hoped she would use the hearings to clear up the confusion many of us had, trying to reconcile the Judge Sotomayor who served for 17 years on the bench with the Judge Sotomayor who made some of these statements and speeches. The hearings were an opportunity for Judge Sotomayor to clear up these things and ultimately, in my view, resulted in a missed opportunity to do so.

Regarding her public statements about judging, I was surprised to hear her say she meant exactly the opposite of what she said; that she had been misunderstood every single time and that she doesn't believe any of these radical statements after all and that her views are aligned with those of Chief Justice John Roberts.

Regarding some of her most controversial decisions, she refused to explain them on the merits. She did not explain her legal reasoning or the constitutional arguments she found persuasive, instead choosing to explain those in terms of process and procedure whenever she could.

She assured us her decisions would be guided by precedent, even when many of her colleagues, both on the court of appeals and the majority of the Supreme Court of the United States, disagreed. At the end of the hearing, I found myself still wondering who is the real Sonia Sotomayor and what kind of judge will she be when she is confirmed to the Supreme Court.

Some have argued if I am uncertain, or if another Senator is uncertain about the answer to that question, that we should go ahead and vote to confirm Judge Sotomayor. I disagree with that. Voting to confirm a judge, this judge, or any judge, despite doubts, would certainly be a politically expedient thing to do, but I do not believe it would be the right thing to do, nor do I believe it would honor the duty we have under the Constitution, providing our advice and consent on a judicial nominee.

We all know the future decisions of the Supreme Court of the United

States will have a tremendous impact on all Americans. The Court, for example, could weaken the second amendment right of Americans to keep and bear arms, and Judge Sotomayor's decisions on that subject reflect, I believe, a restrictive view that is inconsistent with an individual right to keep and bear arms for all Americans.

The Court could fail to protect the fifth amendment private property rights of our people from cities and States that want to condemn their private property for nonpublic uses. Judge Sotomayor has rendered decisions on the Second Circuit Court of Appeals that tend to support the views that she has an opinion of the rights of the government to take private property for private uses, not for public uses, and that concerns me a great deal.

The Court could, in fact, invent new rights that appear nowhere in the Constitution, as they have done in the past, based on foreign law, a subject that Judge Sotomayor has spoken and written on, but she did not settle any concerns many of us had about what role that would play in her decision-making process when she is confirmed.

I believe the stakes are simply too high for me to vote for a nominee who can address all of these issues from a liberal activist perspective. And so I say it is with regret and some sadness that I will vote against the confirmation of Judge Sonia Sotomayor. I will vote with a certain knowledge, however, that she will be confirmed despite my vote.

I wish her well. I congratulate her on her historic achievement. I know she will be an inspiration to many young people within the Hispanic community and beyond. And I hope, I hope, she proves me wrong in my doubts.

The Justice she is replacing, after all, has proved to have a far different impact than the President who nominated that judge believed that judge would have. So perhaps Judge Sonia Sotomayor will surprise all of us.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, what is the business before the Senate?

The ACTING PRESIDENT pro tempore. The Senate is in morning business.

HEALTH CARE

Mr. DODD. I thank the Presiding Officer. I am going to take a few minutes, if I can, to talk about health care again. I did on Wednesday evening, and I intended to speak yesterday, but there was an objection raised to having any morning business yesterday while we were considering the Defense authorization bill. So as a result of that, I was unable to come to the floor and talk about the health care issues in our country and the pending legislation in this body and in the other body.

As some may know—I know my colleagues are aware of this—I have been

in the position of being the acting chairman of the Senate HELP Committee. The committee is chaired by our dear friend and colleague Senator TED KENNEDY, who is wrestling with his own health care crisis at this very hour and so has been unable to be with us these last several months as we have begun the process of marking up, that is, considering the legislation dealing with health care. So as the person sitting next to him on that committee, I was asked to assume the responsibility of chairing the committee as we considered the health care legislation.

We have finished our work. We finished it a week ago on Wednesday after numerous hours. I point this out to our colleagues—I know many of them may be aware of this already—we on the HELP Committee spent close to 60 hours in consideration of our bill. I am told it was the longest time that—at least in memory of all here—the committee has spent on the consideration of any single bill.

We had some 23 sessions over 13 days. There were around 800 amendments filed before our committee. We considered just shy of 300 of them. Of that 300, we accepted 161 amendments from our Republican friends on the committee.

Many of these amendments were technical amendments. But they were not all technical amendments. They were worthwhile and positive amendments, and there were a number of very important amendments that were offered by our Republican colleagues that I think strengthened and made the bill a better bill, substantially a bipartisan bill.

At the end of the day, after all of these hours and work, we did not have the votes of our Republican friends on the committee. But their contribution to the product was significant. As I mentioned earlier, Senator GREGG and a number of our Republican colleagues on the committee were concerned about the long-term fiscal impact of the new voluntary insurance program for long-term care. We agreed with that amendment. It was a tremendous help.

Senator ISAKSON of Georgia raised the issue of end-of-life care, drawing on his own family experiences. We were able to accommodate his ideas in that area.

Senators ENZI, GREGG, and ALEXANDER suggested that we increase employers' flexibility to offer workplace wellness programs with incentives for employees. That was a very sound proposal, one that has been recommended to us by others. It was added to the bill. Senator HARKIN did a very good job, along with others, in reaching that accommodation.

Senator HATCH's amendment was dealing with follow-on biologics. The full Hatch proposal was adopted by the committee.

Our friend TOM COBURN from Oklahoma proposed an amendment to empower individuals to make healthy decisions by having the CDC establish a